IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1622 of 2004

DATE OF DECISION: December 22, 2010

ORIENTAL INSURANCE CO. ...APPELLANT

VERSUS

SHAMSHER SINGH ...RESPONDENT

CORAM: HON'BLE MR. JUSTICE K.KANNAN.

1. Whether reporters of local papers may be allowed to see the judgement. Yes/No
2. To be referred to the reporters or not? Yes/No
3. Whether the judgement should be reported in the digest? Yes/No

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PRESENT: MR. VINOD CHAUDHRI,
ADVOCATE FOR THE APPELLANT.

NONE FOR RESPONDENTS NO.1 TO 3 AND 5.

MR. SUMIT SANGWAN,
ADVOCAE FOR RESPONDENT NO.4.

K.KANNAN, J.(ORAL)

1. The Insurance company is on appeal challenging the liability on the ground that the driver did not have a valid driving licence. At the trial the insurance company produced the evidence of the Licencing Clerk from the office of Licencing Authority, Loharu and the evidence is tendered to the effect that Licence No.51494 at S.No.416 contained an entry of renewal of the licence in the name of Sajjan Kumar S/o Jaimal C/o Vijay Singh at Loharu. The renewal contained the photograph of Sajjan Kumar. The application was said to have been filed for renewal on 15.5.1998. The driver against whom the negligence was attributed and the case filed was Sushil Kumar S/o Jaimal Singh and the address was given as Bariwala

Bilawal. The copy of the driving licence had been produced by the driver at the trial and I have examined the same contained in the records of the Tribunal. I find that the very same driving licence No.51494 has been issued on 31.5.1991 by the Licencing Authority at Sirsa and the name given was Sushil Kumar. The father's name is Jaimal Singh. A contention on behalf of the driver owner is that his name was Pohlu Ram @ Sushil Kumar and the licence had also been only in the name of Sushil Kumar, but when a renewal has been made in the register, it appears that they had carried out the name as Sajjan Kumar. The endorsement of renewal in the licence book was in the name of Sushil Kumar. Even the photograph affixed in the renewal register was with reference to the very same person as found in the copy of the licence produced by the insurance company. If there was any difference between photographs found in the renewal register and the copy of the licence book produced by the driver, the difference must have been elicited in the evidence itself. The insurance company rest contended on bringing out a discrepancy in the name to affirm that a licence had been issued to someone else other than the driver, I have no doubt in my view that it was an obvious mistake because the father's name tallies and the copy of the licence produced itself shall be that it had been originally issued only in the name of Sushil Kumar. The witness RW2 who also admitted that the register brought by him contained a reference to issue of a licence No.51494 as having been made by the Licencing Authority at Sirsa and the insurance company must have still taken steps to produce the original register from the licencing authority at Sirsa to show any discrepancy if there existed. A mere production of the renewal register in such a case where the mistaken identity was sought to be urged, in my view, will not be sufficient. It cannot

be taken that burden of proof of establishing that the driver did not have the valid driving licence was properly discharged by the insurer. I will hold on the other hand that the driver's name found in the register produced by the witness was really making reference only to the driver who is arrayed as a respondent and referred to by the name Pohlu Ram S/o Jaimal.

The award is confirmed and the appeal by the insurance company is dismissed.

December 22, 2010 **(K.KANNAN)**
Gulati **JUDGE**